

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1411 Termination of Pregnancies

SPONSOR(S): Burton and others

TIED BILLS: **IDEN./SIM. BILLS:** SB 1722

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Quality Subcommittee		McElroy	O'Callaghan
2) Health Care Appropriations Subcommittee			
3) Health & Human Services Committee			

SUMMARY ANALYSIS

HB 1411 amends existing abortion clinic and fetal tissue disposal requirements, and creates a registration program for abortion referral and counseling agencies.

The bill requires clinics that perform only first trimester abortions to have either a written patient transfer agreement or the physician who performs the abortion to have admitting privileges with a hospital within a reasonable proximity to the clinic. Abortion clinics that perform abortions after the first trimester must have such a written agreement and all physicians who perform abortions in those clinics must have such admitting privileges.

The bill prohibits anyone from advertising, selling, purchasing, donating and transferring fetal remains obtained through an abortion, as well as offering to do any of the preceding acts.

The bill prohibits public funding for an organization that owns, operates, or is affiliated with a licensed abortion clinic but provides exemptions to this prohibition.

The bill requires the Agency for Health Care Administration (AHCA) to perform annual licensure inspections of all abortion clinics, including a review of at least 50% of the patient records generated since the last inspection.

The bill establishes the manner for disposal of fetal remains and clarifies the penalty for failing to do so.

The bill requires all abortion clinics to comply with the reporting requirements for the United States Standard Report of Induced Termination of Pregnancy adopted by the Centers for Disease Control and Prevention.

The bill requires AHCA to submit an annual report to the President of the Senate and the Speaker of the House of Representatives which summarizes all regulatory actions it has taken against abortion clinics and referral agencies during the prior year.

The bill requires abortion referral or counseling agencies to register with AHCA.

The bill removes an existing statutory license fee cap and requires AHCA to establish fees which may not be more than the costs incurred by AHCA in licensing and regulating abortion clinics.

The bill appears to have a negative fiscal impact on state government and may have an indeterminate, positive fiscal impact on local government.

The bill provides an effective date of January 1, 2017.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Federal Law on Abortion

Right to Abortion

In 1973, the foundation of modern abortion jurisprudence, *Roe v. Wade*¹, was decided by the U.S. Supreme Court. Using strict scrutiny, the Court determined that a woman's right to an abortion is part of a fundamental right to privacy guaranteed under the Due Process Clause of the Fourteenth Amendment of the U.S. Constitution. Further, the Court reasoned that state regulation limiting the exercise of this right must be justified by a compelling state interest, and must be narrowly drawn.² In 1992, the fundamental holding of *Roe* was upheld by the U.S. Supreme Court in *Planned Parenthood v. Casey*.³A

The Viability Standard

In *Roe v. Wade*, the U.S. Supreme Court established a rigid trimester framework dictating when, if ever, states can regulate abortion.⁴ The Court held that states could not regulate abortions during the first trimester of pregnancy. With respect to the second trimester, the Court held that states could only enact regulations aimed at protecting the mother's health, not the fetus's life. Therefore, no ban on abortions is permitted during the second trimester. The state's interest in the life of the fetus becomes sufficiently compelling only at the beginning of the third trimester, allowing it to prohibit abortions. Even then, the Court requires states to permit an abortion in circumstances necessary to preserve the health or life of the mother.⁵

The current viability standard is set forth in *Planned Parenthood v. Casey*.⁶ Recognizing that medical advancements in neonatal care can advance viability to a point somewhat earlier than the third trimester, the U.S. Supreme Court rejected the trimester framework and, instead, limited the states' ability to regulate abortion pre-viability. Thus, while upholding the underlying holding in *Roe*, which authorizes states to "[r]egulate, and even proscribe, abortion except where it is necessary, in appropriate medical judgment, for the preservation of the life or health of the mother[,]"⁷ the Court determined that the line for this authority should be drawn at "viability," because "..... there may be some medical developments that affect the precise point of viability...but this is an imprecision with tolerable limits given that the medical community and all those who must apply its discoveries will continue to explore the matter."⁸ Furthermore, the Court recognized that "in some broad sense, it might be said that a woman who fails to act before viability has consented to the State's intervention on behalf of the developing child."⁹

¹ *Roe v. Wade*, 410 U.S. 113 (1973).

² *Id.*

³ *Casey*, 505 U.S. 833 (1992).

⁴ *Roe*, 410 U.S. 113 (1973).

⁵ *Id.* at 164-165.

⁶ *Casey*, 505 U.S. 833 (1992).

⁷ See *Roe*, 410 U.S. at 164-65.

⁸ See *Casey*, 505 U.S. at 870.

⁹ *Id.*

Undue Burden

In *Planned Parenthood v. Casey*, the U.S. Supreme Court established the undue burden standard for determining whether a law places an impermissible obstacle to a woman's right to an abortion. The Court held that health regulations which impose undue burdens on the right to abortion are invalid.¹⁰ State regulation imposes an "undue burden" on a woman's decision to have an abortion if it has the purpose or effect of placing a substantial obstacle in the path of the woman who seeks the abortion of a nonviable fetus.¹¹ However, not every law, which makes the right to an abortion more difficult to exercise, is an infringement of that right.¹²

The Hyde Amendment

The Hyde Amendment is a rider to the annual appropriations bill for the U.S. Departments of Labor and Education, which prevents Medicaid and any other programs under these departments from funding abortions, except in limited cases. The amendment is named after Rep. Henry J. Hyde (R-IL), who, as a freshman legislator, first offered the amendment.

The Hyde Amendment has been enacted into law in various forms since 1976. In 1980, the U.S. Supreme Court affirmed the constitutionality of the Hyde Amendment in *Harris v. McRae*.¹³ In *Harris*, the Court determined that funding restrictions created by the Hyde Amendment did not violate the U.S. Constitution's Fifth Amendment and, therefore, did not contravene the liberty or equal protection guarantees of the Due Process Clause of the Fifth Amendment.¹⁴ The Court opined that, although government may not place obstacles in the path of a woman's exercise of her freedom of choice, it need not remove those obstacles that are not created by the government (in this case indigence).¹⁵ The Court further opined that, although Congress has opted to subsidize medically necessary services generally, but not certain medically necessary abortions, the Hyde Amendment leaves an indigent woman with at least the same range of choice in deciding whether to obtain a medically necessary abortion as she would have had if Congress had chosen to subsidize no health care costs at all.¹⁶

The current language of the Hyde Amendment, contained in the Consolidated Appropriations Act of 2016 is as follows:¹⁷

SEC. 506.

(a) None of the funds appropriated in this Act, and none of the funds in any trust fund to which funds are appropriated in this Act, shall be expended for any abortion.

(b) None of the funds appropriated in this Act, and none of the funds in any trust fund to which funds are appropriated in this Act, shall be expended for health benefits coverage that includes coverage of abortion.

(c) The term "health benefits coverage" means the package of services covered by a managed care provider or organization pursuant to a contract or other arrangement.

SEC. 507

¹⁰ Id. at 878.

¹¹ Id. at 877.

¹² Id. at 873.

¹³ 448 U.S. 297 (1980). See also *Rust v. Sullivan*, 500 U.S. 173 (1991), and *Webster v. Reproductive Health Services*, 492 U.S. 490 (1989), upholding *Harris v. McRae*.

¹⁴ *Harris*, 448 U.S. at 326-27.

¹⁵ *Harris*, *Id.* at 316-17.

¹⁶ *Id.*

¹⁷ H.R.2029 — 114th Congress (2015-2016). <https://www.congress.gov/bill/114th-congress/house-bill/2029/text> (last visited on January 15, 2016).

(a) The limitations established in the preceding section shall not apply to an abortion—

(1) if the pregnancy is the result of an act of rape or incest; or
(2) in the case where a woman suffers from a physical disorder, physical injury, or physical illness, including a life endangering physical condition caused by or arising from the pregnancy itself, that would, as certified by a physician, place the woman in danger of death unless an abortion is performed.

(b) Nothing in the preceding section shall be construed as prohibiting the expenditure by a State, locality, entity, or private person of State, local, or private funds (other than a State's or locality's contribution of Medicaid matching funds).

(c) Nothing in the preceding section shall be construed as restricting the ability of any managed care provider from offering abortion coverage or the ability of a State or locality to contract separately with such a provider for such coverage with State funds (other than a State's or locality's contribution of Medicaid matching funds).

(d) (1) None of the funds made available in this Act may be made available to a Federal agency or program, or to a State or local government, if such agency, program, or government subjects any institutional or individual health care entity to discrimination on the basis that the health care entity does not provide, pay for, provide coverage of, or refer for abortions.

(2) In this subsection, the term “health care entity” includes an individual physician or other health care professional, a hospital, a provider-sponsored organization, a health maintenance organization, a health insurance plan, or any other kind of health care facility, organization, or plan.

Fetal Tissue

The Secretary of the U.S. Department of Health and Human Services is authorized under federal statutory law to conduct or support research on the transplantation of human fetal tissue for therapeutic purposes.¹⁸ The human fetal tissue used in the research may come from a spontaneous abortion, an induced abortion or a stillbirth.¹⁹ However, before the fetal tissue may be used for research, informed consent must be obtained from:²⁰

- (1) **The woman electing to donate the fetal tissue** who must sign a written statement of consent declaring that the donated fetal tissue is for research, made without restriction as to who may be the recipients of the tissue, and that she has not been informed of the identity of any potential recipients.
- (2) **The attending physician** who must sign a written statement declaring that the tissue has been donated in accordance to (1) and that full disclosure has been made as to the physician's interest, if any, in the research to be conducted with the tissue and of any known medical or privacy risks to the woman.
 - (a) If the fetal tissue has been obtained through an induced abortion the written statement must also attest that the physician obtained consent to the abortion prior to the consent for the donation of the tissue; that no alteration of the timing, method, or procedures used to terminate the pregnancy was made solely for the purposes of obtaining the tissue; and the abortion was performed in accordance with applicable State law.

¹⁸ 42 U.S. Code § 289g-1.

¹⁹ *Id.*

²⁰ *Id.*

- (3) **The researcher** who must sign a written statement of consent declaring that he or she is aware that the tissue is human and that it has been donated as a result of an abortion or stillbirth; has provide this information to any individual performing research or receiving a transplant of the tissue; and, has had no part in any decisions as to the timing, method, or procedures used to terminate the pregnancy.

Federal statutory law prohibits certain transfers and uses of human fetal tissue. The purchase of fetal tissue is prohibited. As such, a person may not knowingly transfer fetal tissue for valuable consideration.²¹ Directed donation for use in transplantation is also prohibited. This applies to a donation which is made pursuant to a promise that the fetal tissue will be transplanted in a specific individual, as well as for a donation in which the recipient has paid for the donor's abortion.²² Finally, solicitation or acceptance of tissues from fetuses gestated for research is prohibited.²³ This includes fetal tissue that was donated related to a pregnancy that was deliberately initiated to provide tissue for research or fetal tissue that was gestated in the uterus of a nonhuman animal.²⁴ Violation of any of these prohibitions can result in fines and imprisonment of up to 10 years.²⁵

Florida Law on Abortion

Right to Abortion

Florida affords greater privacy rights to its citizens than those provided under the U.S. Constitution. While the federal Constitution traditionally shields enumerated and implied individual liberties from state or federal intrusion, the federal Court has long held that the state constitutions may provide even greater protections.²⁶ In 1980, Florida amended its Constitution to include Article I, s. 23 which creates an express right to privacy.²⁷

Every natural person has the right to be let alone and free from governmental intrusion into the person's private life except as otherwise provided herein. This section shall not be construed to limit the public's right of access to public records and meetings as provided by law.

This amendment is an independent, freestanding constitutional provision which declares the fundamental right to privacy and provides greater privacy rights then those implied by the federal Constitution.²⁸

The Florida Supreme Court has recognized Florida's constitutional right to privacy "is clearly implicated in a woman's decision whether or not to continue her pregnancy."²⁹ In *In re T.W.*, the Florida Supreme Court ruled that³⁰:

[P]rior to the end of the first trimester, the abortion decision must be left to the woman and may not be significantly restricted by the state. Following this point, the state may impose significant restrictions only in the least intrusive manner designed to safeguard the health of the mother. Insignificant burdens during either period must substantially further important state interests....Under our Florida Constitution, the state's interest becomes compelling upon viability....Viability under Florida law occurs at that point in

²¹ Valuable consideration does not include reasonable payments associated with the transportation, implantation, processing, preservation, quality control, or storage of human fetal tissue. 42 U.S. Code § 289g-2(a).

²² 42 U.S. Code § 289g-2(b).

²³ 42 U.S. Code § 289g-2(c).

²⁴ Id.

²⁵ 42 U.S. Code § 289g-2(d).

²⁶ *In re T.W.*, 551 So.2d 1186, 1191 (Fla. 1989).

²⁷ Id.

²⁸ Id at 1191-1192.

²⁹ Id at 1192.

³⁰ Id at 1193

time when the fetus becomes capable of meaningful life outside the womb through standard medical procedures.

The court recognized that after viability, the state can regulate abortion in the interest of the unborn child if the mother's health is not in jeopardy.³¹

Abortion Regulation

In Florida, abortion is defined as the termination of a human pregnancy with an intention other than to produce a live birth or to remove a dead fetus.³² An abortion must be performed by a physician³³ licensed under ch. 458, F.S., or ch. 459, F.S., or a physician practicing medicine or osteopathic medicine in the employment of the United States.³⁴

The Agency for Health Care Administration (AHCA) licenses and regulates abortion clinics in the state, pursuant to ch. 390, F.S., and part II of ch. 408, F.S.³⁵ To become licensed an abortion clinic must pay a fee which may not be less than \$70 or more than \$500.³⁶

The level of regulation which may be prescribed by AHCA is dependent upon the trimester in which the abortion is being performed.³⁷ However, all abortion clinics and physicians performing abortions are subject to the following requirements:

- An abortion may only be performed in a validly licensed hospital, abortion clinic, or in a physician's office;³⁸
- An abortion clinic must be operated by a person with a valid and current license;³⁹
- A third trimester abortion may only be performed in a hospital;⁴⁰
- Proper medical care must be given and used for a fetus when an abortion is performed during viability;⁴¹
- Experimentation on a fetus is prohibited;⁴²
- Except when there is a medical emergency, an abortion may only be performed after a patient has given voluntary and written informed consent;⁴³
- Consent includes verification of the fetal age via ultrasound imaging;⁴⁴
- Fetal remains are to be disposed of in a sanitary and appropriate manner;⁴⁵ and
- Parental notice must be given 48 hours before performing an abortion on a minor,⁴⁶ unless waived by a parent or otherwise ordered by a judge.

Florida law permits only minimal regulation of clinics providing only first trimester abortions. AHCA is allowed to promulgate regulations which are comparable to rules that apply to all surgical procedures requiring approximately the same degree of skill and care as the

³¹ Id. at 1194.

³² Section 390.011(1), F.S.

³³ Section 390.0111(2), F.S.

³⁴ Section 390.011(8), F.S.

³⁵ Section 408.802(3) provides for the applicability of the Health Care Licensing Procedures Act to abortion clinics.

³⁶ Section 390.014, F.S.

³⁷ Currently, only the third trimester is defined in statute. Pursuant to 59A-9.019, F.A.C., "trimester" is a 12-week period of pregnancy. "First trimester" is the first 12 weeks of pregnancy (the first 14 completed weeks from the last normal menstrual period); "Second trimester" is that portion of a pregnancy following the 12th week and extending through the 24th week of gestation; and "third trimester" is that portion of pregnancy beginning with the 25th week of gestation.

³⁸ Section 797.03 (1), F.S.

³⁹ Section 797.03 (2), F.S.

⁴⁰ Section 797.03(3), F.S. The violation of any of these provisions results in a second degree misdemeanor.

⁴¹ Section 390.0111(4), F.S.

⁴² Section 390.0111(6), F.S.

⁴³ Section 390.0111(3), F.S. A physician violating this provision is subject to disciplinary action.

⁴⁴ Section 390.0111(3)(a)1.b., F.S.

⁴⁵ Section 390.0111(8), F.S. A person who improperly disposes of fetal remains commits a second degree misdemeanor.

⁴⁶ Section 390.01114(3), F.S. A physician who violates this provision is subject to disciplinary action.

performance of first trimester abortions.⁴⁷ These regulations consist of requiring first trimester abortions performed by a licensed physician at a licensed facility and minimal record-keeping requirements.⁴⁸ Several other regulations related to first trimester abortions have been held unconstitutional, including rules which required abortion clinics and the physicians who perform first trimester abortions to:⁴⁹

- Maintain specified equipment in the clinic;
- Prepare a written pamphlet outlining post-operative treatment;
- Perform specified tests prior to the abortion procedure;
- Make available certain medications for post-operative treatment;
- Establish procedures to maintain proper sanitation; and
- Dispose of fetal remains in a nuisance-free manner.

AHCA has broader authority to establish rules for abortion clinics which perform abortions after the first trimester. This includes, among others, prescribing standards for:⁵⁰

- Adequate private space for interviewing, counseling, and medical evaluations;
- Dressing rooms for staff and patients;
- Appropriate lavatory areas;
- Areas for pre-procedure hand-washing;
- Private procedure rooms;
- Adequate lighting and ventilation for procedures;
- Surgical or gynecological examination tables and other fixed equipment;
- Post-procedure recovery rooms that are equipped to meet the patients' needs;
- Emergency exits to accommodate a stretcher or gurney;
- Areas for cleaning and sterilizing instruments;
- Adequate areas for the secure storage of medical records and necessary equipment; and
- Conspicuous display of the clinic's license.

AHCA is also required to promulgate rules for clinics which perform abortions after the first trimester which require an abortion clinic to designate a medical director who is licensed to practice medicine in this state.⁵¹ The medical director must have admitting privileges at a licensed hospital in this state or have a transfer agreement with a licensed hospital within reasonable proximity⁵² of the clinic.⁵³

AHCA has broad authority to inspect abortion clinics. These inspections must occur biennially and must be unannounced.⁵⁴ AHCA has the right to inspect all records of abortion clinics.⁵⁵ The exact number of records to be reviewed during the inspection is at the discretion of AHCA.

Both the Department of Health (DOH) and AHCA have authority to take licensure action against individuals and clinics that are in violation of statutes or rules.⁵⁶ Additionally, abortion clinics may be subject to criminal penalties for violation of statutes and rules.

Abortion Data Collection and Reporting Requirements

⁴⁷ Section 390.012(2), F.S.

⁴⁸ *Florida Women's Medical Clinic, Inc. v. Smith*, 536 F.Supp. 1048 (S.D. Fla. 1982).

⁴⁹ Id.

⁵⁰ Section 390.012(3)(a)1., F.S. Rules related to abortion are found in ch. 59A-9, F.A.C.

⁵¹ Section 390.012(3)(c), F.S.

⁵² "Reasonable proximity" means a distance not to exceed thirty minutes transport time by emergency vehicle. 59A-9.019, F.A.C.,

⁵³ Section 390.012(3)(c), F.S.

⁵⁴ Section 408.811, F.S.

⁵⁵ Id.

⁵⁶ Section 390.018, F.S.

Currently facilities that perform terminations are required to submit a monthly report to AHCA containing the following:

- Number of abortions performed,
- Reason for performance; and
- Gestational age of the fetus.⁵⁷

AHCA is required to keep this information in a central location from which statistical data can be drawn.⁵⁸ If the abortion is performed in a location other than a medical facility, the physician who performed the abortion is responsible for reporting the information to AHCA.⁵⁹ The reports are confidential and exempt from public records requirements.⁶⁰ Fines may be imposed for violations of the reporting requirements.⁶¹

The Centers for Disease Control and Prevention (CDC), compiles statistics voluntarily reported by the 50 states, the District of Columbia and New York City, related to termination of pregnancies to produce a national estimate.⁶² The last national estimate was completed in 2012.⁶³ The CDC requests the following information from states in the U.S. Standard Report of Induced Termination of Pregnancy:

- Facility name (clinic or hospital);
- City, town or location;
- County;
- Hospital or clinic's patient identification number (used for querying for missing information without identifying the patient);
- Age;
- Marital status;
- Date of termination;
- Residence of patient;
- Ethnicity;
- Race;
- Education attainment;
- Date of last menses;
- Clinical estimate of gestation;
- Previous pregnancy history;
- Previous abortion history;
- Type of abortion procedure; and
- Name of attending physician and name of person completing report.⁶⁴

The CDC uses this data to provide an annual Abortion Surveillance Report (ASR). The CDC notes that they receive data from some states, but not all.⁶⁵ Currently, Florida only reports the annual number of terminations that occur in the state,⁶⁶ and is therefore absent from all but three of the charts in the ASR.

Florida Abortion Statistics

⁵⁷ Section 390.0112 (1), F.S.

⁵⁸ *Id.*

⁵⁹ Section 390.0112(2), F.S.

⁶⁰ Section S. 390.0112(3), F.S.

⁶¹ Section 390.0112(4), F.S.

⁶² *Abortion Surveillance- United States, 2012*, Surveillance Summaries, Centers for Disease Control and Prevention, November 27, 2015 / 64(SS10);1-40 http://www.cdc.gov/mmwr/preview/mmwrhtml/ss6410a1.htm?s_cid=ss6410a1_e (last visited on January 4, 2016).

⁶³ *Id.*

⁶⁴ Centers for Disease Control, Handbook on the Reporting of Induced Termination of Pregnancy, www.cdc.gov/nchs/data/misc/hb_itop.pdf (last visited on January 4, 2016).

⁶⁵ *Abortion Surveillance- United States, 2012*, Surveillance Summaries, Centers for Disease Control and Prevention, November 27, 2015 / 64(SS10);1-40 http://www.cdc.gov/mmwr/preview/mmwrhtml/ss6410a1.htm?s_cid=ss6410a1_e (last visited on January 4, 2016).

⁶⁶ *Id.*

In 2014, DOH reported that there were 220,138 live births in the state of Florida.⁶⁷ In the same year, AHCA reported that there were 72,073 abortion procedures performed in the state. Of those performed:⁶⁸

- 65,902 were performed in the first trimester (12 weeks and under);
- 6,171 were performed in the second trimester (13 to 24 weeks); and
- None were performed in the third trimester (25 weeks and over).

The majority of the procedures (65,210) were elective.⁶⁹ The remainder of the abortions were performed due to:⁷⁰

- Emotional or psychological health of the mother (76);
- Physical health of the mother that was not life endangering (158);
- Life endangering physical condition (69);
- Rape (749);
- Serious fetal genetic defect, deformity, or abnormality (560); and
- Social or economic reasons (5,115).

Florida's Application of the Hyde Amendment

In Florida, based on the Hyde Amendment, Medicaid reimburses for abortions for one of the following reasons:

- The woman suffers from a physical disorder, physical injury, or physical illness, including a life endangering physical condition caused or arising from the pregnancy itself, that would place the woman in danger of death unless an abortion is performed;
- When the pregnancy is the result of rape (sexual battery) as defined in s. 794.011, F.S.; or
- When the pregnancy is the result of incest as defined in s. 826.04, F.S.⁷¹

An Abortion Certification Form must be completed and signed by the physician who performed the abortion for the covered procedures. The form must be submitted with the facility claim, the physician's claim, and the anesthesiologist's claim. The physician must record the reason for the abortion in the physician's medical records for the recipient.⁷²

Fetal Tissue

Florida law prohibits experimentation on any live fetus or infant either prior to or subsequent to an abortion unless it is necessary to preserve the life of such fetus or infant.⁷³ Florida law also prohibits anyone from advertising, selling, purchasing or otherwise transferring a human embryo for valuable consideration.⁷⁴ There is however no prohibition against the donation of a human embryo.

Chapter 390, F.S., contains two standards for the disposal of fetal tissue. Pursuant to s. 390.0111, F.S., all fetal remains must be disposed of in a sanitary and appropriate manner and in accordance with standard health practices established by DOH. Failure to dispose of fetal

⁶⁷ Correspondence from the Department of Health to the House of Representatives Health Quality Subcommittee dated February 26, 2015, on file with Health Quality Subcommittee Staff.

⁶⁸ Reported Induced Terminations of Pregnancy (ITOP) by Reason, By Weeks of Gestation for Calendar Year 2014, AHCA, on file with the Health Quality Subcommittee Staff.

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ Agency for Health Care Administration, *Florida Medicaid: Ambulatory Surgery Center Services Coverage and Limitations Handbook*, January 2005, available at http://www.baccinc.org/medi/CD_April_2005/Provider_Handbooks/Medicaid_Coverage_and_Limitations_Handbooks/Ambulatory_Surgical_Center_Updated_January_2005.pdf (last visited Mar. 17, 2011).

⁷² *Id.*

⁷³ Section 390.0111(6), F.S.

⁷⁴ Section 873.05, F.S. "Valuable consideration" does not include the reasonable costs associated with the removal, storage, and transportation of a human embryo.

remains in accordance with department rules is a misdemeanor of the second degree.⁷⁵ Pursuant to s. 390.012, F.S., abortion clinics are required to dispose of fetal tissue in a competent and professional manner consistent with the manner in which other human tissue is disposed.⁷⁶ Failure to adhere to this requirement is a first degree misdemeanor.⁷⁷

Abortion Referral or Counseling Agencies

An “abortion referral or counseling agency” is any person, group, or organization that provides advice or help to persons in obtaining abortions.⁷⁸ These entities may be funded publicly or privately and are prohibited from charging or accepting any referral fees from a physician, hospital, clinic, or other medical facility.⁷⁹ Abortion referral or counseling agencies are required to provide an individual with a full explanation of an abortion, including alternatives to this procedure.⁸⁰ If the individual is a minor, then this explanation must also be provided to the parent or guardian of the minor.⁸¹

Effect of Proposed Changes

The bill requires clinics that perform only first trimester abortions to have either a written patient transfer agreement or the physician who performs the abortion to have admitting privileges with a hospital within a reasonable proximity to the clinic. Abortion clinics that perform abortions after the first trimester must have such a written agreement and all physicians who perform abortions in those clinics must have such admitting privileges.

The bill prohibits anyone from advertising, selling, purchasing, donating and transferring fetal remains obtained through an abortion, as well as offering to do any of the preceding acts.

The bill prohibits a state agency, local governmental entity, or managed care plan providing services under part IV of chapter 409(Medicaid), F.S., from expending funds for the benefit of, pay funds to, or initiate or renew a contract with an organization that owns, operates, or is affiliated with a licensed abortion clinic. The bill provides exemptions to this prohibition if:

- All abortions performed are due to rape or incest or are medically necessary to preserve the life of the pregnant woman;
- The funds must be expended to fulfill the terms of a contract entered into before July 1, 2016; or
- The funds must be expended as reimbursement for Medicaid services provided on a fee-for-service basis.

The bill requires AHCA to perform annual licensure inspections of all abortion clinics. AHCA is required to review at least 50% of the patient records generated since the last inspection. AHCA is also required to promptly investigate allegations that unlicensed abortions are being performed at a clinic.

Chapter 390, F.S., currently contains two methods, each with different standards and levels of penalties, for the disposal of fetal remains. The bill eliminates this potential conflict and requires disposal of fetal remains in a sanitary manner pursuant to s. 381.0098, F.S., rules adopted thereunder and rules adopted by AHCA under this provision.

The bill requires all abortion clinics, by January 1, 2017, to report to AHCA information consistent with the United States Standard Report of Induced Termination of Pregnancy adopted by the CDC. AHCA must submit this data to the CDC upon request.

⁷⁵ Section 390.0111(7), F.S.

⁷⁶ Section 390.012(7), F.S.

⁷⁷ Id.

⁷⁸ Section 390.025, F.S.

⁷⁹ Id.

⁸⁰ Id.

⁸¹ Id.

The bill requires, beginning February 1, 2017, AHCA to submit an annual report to the President of the Senate and the Speaker of the House of Representatives which summarizes all regulatory actions taken by it against abortion clinics and referral or counseling agencies during the prior year.

The bill requires registration of abortion referral or counseling agencies. AHCA will set the registration fee which may not exceed the cost to administer the registration. Facilities licensed pursuant to chapters 390, 395, 400 and 408, F.S., are exempt from registering as well as health care clinics and health care practitioners defined in s. 456.001, F.S., if they refer less than 6 patients each month.

The bill removes the statutory license fee cap of not less than \$70 and not more than \$500 and requires AHCA to establish fees which may not be more than required to pay for the costs incurred by AHCA in licensing and regulating abortion clinics.

The bill defines gestation and trimester to provide clarification as to when the first, second and third trimesters begin and end.

Provides an effective date of July 1, 2016, or as otherwise specified in the bill.

B. SECTION DIRECTORY:

Section 1: Amending s. 390.011, F.S., relating to definitions.

Section 2: Amending s. 390.0111, F.S., relating to termination of pregnancies.

Section 3: Amending s. 390.0112, F.S., relating to termination of pregnancies and reporting.

Section 4: Amending s. 390.012, F.S., relating to powers of agency, rules and disposal of fetal remains.

Section 5: Amending s. 390.014, F.S., relating to licenses fees.

Section 6: Amending s. 390.025, F.S., relating to abortion referral or counseling agencies and penalties.

Section 7: Amending s. 873.05, F.S., relating to advertising or sale of human embryos prohibited.

Section 8: Provides an effective date of July 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Fees related to the registration of abortion referral and counseling agencies which may not exceed costs incurred by AHCA in administering the registration of these providers.

2. Expenditures:

The bill requires AHCA to perform annual licensure inspections of all abortion clinics, including a review at least 50% of the patient records generated since the last inspection. AHCA anticipates this will cause an increase in surveyor workload requiring an additional 0.50 full-time equivalent (FTE) nurse surveyor position. This position will require \$3,569 in non-recurring funds and \$53,651 in recurring funds.

The bill prohibits public funding for an organization that owns, operates, or is affiliated with a licensed abortion clinic. This includes state agencies and managed care plans and may result in an indeterminate, positive fiscal impact.

The bill requires AHCA to collect and report information consistent with the United States Standard Report of Induced Termination of Pregnancy adopted by the CDC. Changes will need to be made to AHCA's ITOP reporting system to be consistent with the bills reporting requirements. AHCA estimates nonrecurring programming and developer costs of \$181,664 for the initial setup and \$6,300 in recurring costs thereafter.

The bill requires the registration of referral and counseling agencies. AHCA will incur costs administering this program. However, the bill authorizes AHCA to set and collect registration fees which should offset any costs it incurs in the administration of this program.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill prohibits public funding for an organization that owns, operates, or is affiliated with a licensed abortion clinic. This applies to funding provided through local governmental entities and may result in an indeterminate, positive fiscal impact.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Abortion clinics may incur an indeterminate, negative fiscal impact associated with compliance with the bill's data reporting requirements.

The bill prohibits public funding for an organization that owns, operates, or is affiliated with a licensed abortion clinic. This applies to funding provided through local governmental entities, state agencies and managed care plans. This may result in an indeterminate, negative fiscal impact for clinics and associated business organizations.

Abortion referral and counseling agencies will incur a negative fiscal impact related to the bill's registration requirement.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties and municipalities have to raise revenue in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

The bill requires clinics which perform 1st trimester abortions only to have either a written patient transfer agreement with a hospital within a reasonable proximity or the physician who performs the abortion to have admitting privileges at a hospital within a reasonable proximity. State and federal law permit only minimal regulation of first trimester abortions. In Florida, these regulations consist of requiring first trimester abortions be performed by a licensed physician at a licensed facility and minimal record-keeping requirements. Previously enacted regulations which exceeded these minimal regulations were found to be unconstitutional.

The bill requires abortion clinics that perform abortions after the first trimester to have all physicians who perform abortions have admitting privileges at a hospital within a reasonable proximity to the clinic. Ten states have enacted similar laws which have been upheld in five states, including Texas. The Texas statute is currently under review by the United States Supreme Court.⁸²

B. RULE-MAKING AUTHORITY:

AHCA currently has sufficient rule-making authority to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

⁸² *Whole Woman's Health v. Cole*, 136 S.Ct. 499 (U.S. 2015).